WP(C) 1268/2005
BEFORE
THE HON'BLE MR. JUSTICE IA ANSARI
JUDGMENT AND ORDER
(ORAL)

All these four writ petitions, namely, WP(C) Nos. 1267/05, 106/05, 2405/05 and 4026/2007, have been heard together for the purpose of final disposal and all these writ petitions are being disposed of by this common order inasmuch as all these writ petitions are closely inter-linked with each other and the disposal of any of these writ petitions would have a bearing on the ultimate decision in the remaining writ petitions.

2. In the present writ petitions, the petitioner, Smti. Chanchala Paul, was appointed, on 18-02-1981, as an Assistant Teacher in Bhanga ME School, Karimganj, and, having been so appointed, she joined the post on 21-01-1981. As far as respondent No. 5, namely, Rashid Ahmed, in WP(C) No. 4026/2007, is concerned, he joined the post of Hindi Teacher in Bhanga ME School, Karimganj, on 01-04-1985, on being transferred from another school. The petitioner and was allowed to hold the charge of the office of the Headmaster of Bhanga ME School, Karimganj, by virtue of an order, dated 03-01-2004, passed in this regard. This order, dated 03-01-2004, was put to challenge by respondent No. 5, on 23-08-2004, by way of a writ application, which gave rise to WP(C) No. 6068/2004. While WP(C) No. 6068/2004 was pending for decision, District Elementary Officer, Karimganj, determined, on 27-09-2004, the claim of seniority and promotion of respondent No. 5 and held to the effect that he was neither the senior most teacher in Bhanga ME School, Karimganj, nor did he have requisite qualification for selection and promotion to the post of Headmaster of the said school. Shortly, thereafter, i.e., on 13-12-2004, Smti Chanchala Paul and some others submitted a representation to their authority concerned seeking regularization of their services in the post of Headmaster. While this representation was pending, District Elementary Officer, Karimganj, passed an order, on 01-01-2005, appointing the Block Elementary Education Officer, Badarpur (in short, 'the BEEO'), to hold the charge of office of the Headmaster of Bhanga ME School, Karimganj. This order, dated 01-01-2005, was impugned by the present petitioner Smti. Chanchala Paul, on 07-01-2005, by way of a writ petition, which gave rise to WP(C) No. 106/2005. While this writ petition was still pending for decision, District Elementary Education Officer, Karimganj (in short, 'the DEEO'), appointed, on 17-01-2005, Smti. Jharna Dey, an Assamese Language Teacher of Bhanga ME School, Karimganj, as the Headmaster-in-Charge of the said school, for the period of pendency of WP(C) No. 106/2005. Before, however, making the appointment of Smti. Jharna Dey as the Headmaster-in-Charge of the said school, the DEEO issued, on 11-01-2005, a notice to the present writ petitioner directing her to show cause as to why disciplinary proceeding shall not be initiated against her on certain accusations made against her. The present petitioner submitted a reply, on 22-01-2005, to the said notice of show cause. However, on 28-01-2005, the DEEO, passed an order placing the petitioner under suspension pending drawing of the disciplinary proceeding. The petitioner challenged the said order of suspension by filing a writ petition on 17-02-2005. This writ petition gave rise to WP(C) No. 1267/2005. As the suspension order has not been interfered with, so far, by any authority superior to the DEEO or by the Court, the writ petitioner has continued to remain under suspension. In the meanwhile, the disciplinary proceeding, drawn against the present petitioner, progressed and, upon holding regular inquiry, an inquiry report has been submitted, but this inquiry report has not yet been acted upon by the respondents/authorities concerned.

3. What may, however, be pointed out, at this stage, is that WP(C) No. 6068/2004, which the present respondent No. 5 had filed claiming promotion to the post of Headmaster of Bhanga ME School, Karimganj, was, eventually, disposed of on being withdrawn. As far as the appointment of Smti. Jharna Deay to hold the pos

t of Headmaster of Bhanga ME School, Karimganj is concerned, the same was challe nged, on 22-03-2005, by way of yet another writ petition filed by the present pe titioner, namely, Chanchala Paul and this writ petition gave rise to WP(C) No. 2 405/2005. In course of time, as Smti Jharna Dey expressed her unwillingness to h old the charge of the office of the Heamaster of the said school, she was remove d. Thus WP(C) No. 2405/2005 became, in effect, infructuous.

4. It may, now, be pointed out that in WP(C) No. 2405/2005, the present pet itioner was directed to address her grievances to the Teachers Grievance Cell. P ending decision of the said Cell, the DEEO allowed, vide order, dated 26-04-2005 , respondent No. 5 to hold the charge of the office of the Headmaster of Bhanga ME School, Karimganj. The Teachers Grievance Cell disposed of the present petiti oner's representation, on 11-07-2005, holding to the effect, inter alia, that sh e was qualified and eligible for promotion to the post of Headmaster of Bhanga M E School, Karimganj. It was, however, made clear by the said Cell that the petit ioner could not be considered for promotion or appointment to the post of Headma ster of the said school on account of the fact that she was under suspension. Wh at is, however, more significant to note is that the said Cell also expressed th e view that the respondent No. 5, i.e., Md. Rashid Ahmed too is eligible for pro motion as Headmaster of Bhanga ME School, Karimganj. It is also worth noticing t hat the order, dated 06-04-2005, whereby the respondent No. 5 was allowed to hol d the charge of the office of the Headmaster of Bhanga ME School, Karimganj, cam e to be challenged by the present petitioner by way of a writ petition, which ha s come to be registered as WP(C) No. 4026/2007, wherein the petitioner's chief g rievance is that the respondent No. 5 is not qualified and/or eligible to be pro moted to the post of Headmaster of ME School.

5. It is in the backdrop of the above facts that the present set of writ pe titions has been taken up for consideration.

6. Heard Mr. N Dhar, learned counsel for the petitioners, and Mr. T Islam, learned Standing counsel, Education Department, appearing on behalf of the State respondents. Heard also Mr. HRA Choudhury, learned Senior counsel, for the resp ondent No. 5.

7. Shorn of all the details leading to the hearing of these writ petitions, what clearly emerges is that the petitioner, namely, Chanchala Paul, is an Assi stant Teacher, who stand, as on today, suspended on the ground of pendency of di sciplinary proceeding drawn against her. In such circumstances, so long as the o rder of suspension continues, the petitioner remains disabled from putting to ch allenge the order of appointment and/or the order of promotion made in favour of the respondent No. 5, the reason being that as long as the suspension order rem ains in force, the petitioner remains ineligible for being considered for promot ion to the post of Headmaster and so long as this ineligibility of the petitione r continues, the petitioner cannot be treated to be a person aggrieved by of the order of appointment/promotion of respondent No. 5 as Headmaster of Bhanga ME S chool, Karimganj. When the suspension order is withdrawn or cancelled, the petit ioner, depending upon what, eventually, happens in the disciplinary proceeding, may become eligible to challenge the appointment of the respondent No. 5 as the Headmaster of Bhanga ME School, Karimganj.

8. The moot question, therefore, which needs to be determined is this: Whet her the order of suspension, passed against the petitioner and put to challenge in WP(C) No. 1267/2005, is sustainable in law? The material partition of the sus pension order, dated 28-01-2005, reads as under:-

> Pending drawl of departmental proceeding, Smti. Chanchala Paul, Assista nt Teacher, Bhanga ME School, Karimganj, is hereby placed under suspension with immediate effect under Rule 6(1) of Assam Disciplinary and Appeal Rule, 1964 for authorized absence in the school and defying orders of the higher authority.
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> Further, she is hereby allowed to draw subsistence allowance as per rule

as admissible subject to production of necessary certificate of non-engagement.

9. From a bare reading of the contents of the order, dated 28-01-2005, aforementioned, it is clear that the petitioner was placed under suspension for her alleged unauthorized absence from duty and also for her alleged defiance of the order passed by the superior authority. In the face of the reasons assigned for placing the petitioner under suspension, the order, dated 28-01-2005, cannot be said to be bad in law. I must hasten to add that the accusations made against the petitioner to the effect that she had been unauthorisely absent from duty and/or that she had defied the order of the superior authority are largely questions of fact and this Court expresses no opinion on the veracity or correctness of these accusations. What cannot, however, be disputed is that the result or out-come of the disciplinary proceeding, which would, eventually, govern the fate of the suspension order, dated 28-01-2005.

10. What emerges from the above discussion is that as far as the suspension order, dated 28-01-2005, is concerned, the same, for reasons already assigned above, cannot be interfered with and so long as this suspension order continues, the appointment/promotion of the respondent No. 5 cannot be put to challenge by the present petitioner.

11. In the result and for the foregoing reasons, the WP(C) Nos. 2405 and 1267/2005 are dismissed and in consequence thereof, WP(C) No. 4026/2007 cannot stand and shall accordingly dismissed. As far as WP(C) No. 106/2005 is concerned, the same has become, as already discussed above, infructuous and shall accordingly stand disposed of.

12. With the above observations and directions, these writ petitions shall stand disposed of.

13. Before parting with these writ petitions, I consider it necessary to point out that the disciplinary proceeding, drawn against the petitioner, has been pending for a long time, and in view of the fact that the inquiry report has already been submitted in the said proceeding, the respondents/authorities concerned shall deal with, and dispose of, the matter in accordance with law expeditiously and without unnecessary delay. It is also made clear that notwithstanding the dismissal of the three writ petitions filed by the petitioner, the petitioner shall remain at liberty to approach this Court with appropriate application(s), in future, if so advised in the event the disciplinary proceeding is prolonged without any justifiable reason(s).